* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) No. 8222/2007**

Date of Decision: 8th February, 2008

DR. RAJBIR SOLANKI & ORS. ...... Petitioner
! Through : Mr. Ravinder Sethi, Sr. Adv. with
Mr. Pushkar Sood, Anshuman Sood, Adv.

versus

$ UNION OF INDIA & ORS. ...... Respondents
^ Through : Mr. S.P. Sharma, Adv. for UOI
Mr. Sanjay Poddar, Adv. for LAC
Ms. Anusuly Salwan, Adv for DSIDC

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CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: T.S. THAKUR, J.

Ten years after the issue of a preliminary notification and a declaration under Section 6 and eight years after the taking over of the possession and making of the award, the petitioners have assailed the validity of the acquisition proceedings in relation to a parcel of land measuring 3 bigha and 16 biswas in Khasra No. 21/24/1 and 1 bigha in Khasra No. 22/4/2 of Village Baprola within NCT of Delhi. A communication dated 7th April, 2003 rejecting the petitioner's request for de-notification of the land in terms of Section 48 of the Act has also been assailed with a prayer for a writ of mandamus directing the de-notification Committee to reconsider the application and to de-notify the land in question. The challenge to the acquisition proceedings is on the face of it barred by unexplained delay and laches, but before we elaborate on that aspect, we need to set out a few facts relevant to the present controversy.

2. The petitioners claim to be joint owners of the land in dispute which was

notified under Section 4 read with 17(1) and (4) of the Land Acquisition Act for public purpose of development of a Growth Centre at Village Bakrola in terms of a notification dated 12th August, 1997. A declaration under Section 6 followed on 26th May, 1998. An award was also made and published by the Collector on 25th May, 2000. According to the respondents, the possession of the land was taken over by them on 1st October, 1999, three years whereafter the petitioners appear to have filed a representation dated 3rd September, 2002 seeking de-notification of the land. That representation was examined and rejected in terms of an intimation dated 7th July, 2003 on the ground that Section 48(1) of the Act had no application since the possession of the land in question had already been taken over by the respondents. More than four years after the issue of the said notification, the petitioners have filed the present writ petition in which they have not only assailed the validity of the acquisition proceedings and sought a certiorari quashing the same but also assailed the rejection of the prayer for de-notification of the land in question.

3. We have heard Mr. Sethi learned counsel for the petitioners and Messrs Sharma and Poddar for the respondents. We have also heard Ms. Anusuya Salwan appearing for Respondent No.4, beneficiary of the acquisition. The challenge to the acquisition proceedings is ex-facie barred by unexplained delay and laches. There is no explanation leave alone a cogent one for complete inaction on the part of the petitioners between the date of preliminary notification issued in August, 1997 and the filing of the present writ petition ten years later. The cause of action to institute appropriate proceedings challenging the validity of the proposed acquisition had finally accrued to the petitioners on 26th May, 1998 when the declaration under Section 6 was issued by the competent authority. So much so, the petitioners allowed the Collector, Land Acquisition to go on with the award proceedings and make his award in May, 2000. The possession of the land was also in the meantime taken over by the Collector in October, 1999.

Having thus allowed the proceedings to be taken to their logical conclusion, the petitioners could not, at this distant point of time, wake up from their deep slumber to assail the validity thereof. Even in the year 2002, the petitioners had only sought de-notification of the land in terms of Section 48 of the Land Acquisition Act. Neither in the representation filed by them nor in any other forum did the petitioners make any grievance regarding the legality of the acquisition proceedings. Ten years after the issue of the declaration, it is no longer possible for this court to entertain the present writ petition or to examine the validity of the proceedings which have attained finality. The approach to be adopted by a writ court in writ petitions challenging the land acquisition proceedings is settled by a long line of decisions rendered by the Supreme Court. In ***Aflatoon & Ors. v. Lt. Governor of Delhi & Ors.*** **AIR 1974 SC 2077**, the declaration under Section 6 was issued in the year 1966 whereas the writ petition was filed in the year 1972. The Supreme Court considered this delay to be sufficient to warrant dismissal of the writ petition on the ground of laches. The Court held that if there was any defect in the notification under Section 4 issued as early as in the year 1959 and the declaration under Section 6 issued in the year 1966, there was no reason why the petitioners should have waited till the year 1972 to come to the Court. It was not, observed the Court, permissible for the petitioners to sit on the fence, allow the Government to complete the acquisition proceedings on the basis of notifications issued under Sections 4 and 6 of the Act and then attack the same on grounds which were available to them when the notification was published. The following passage is in this regard instructive :

> "To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

4. Reference may also be made to ***Municipal Council, Ahmednagar & Anr. v. Shah Hyder Beig & Ors.*** **(2000) 2 SCC 48**, where a challenge to acquisition proceedings had been made years after the making of the award and taking of the possession. Setting aside the order passed by the High Court, their Lordships of the Supreme Court declared the correct approach to be adopted in such matters in the following words :

> "....It is now a well-settled principle of law that while no period of limitation is fixed but in the normal course of events, the period the party is required for filling a civil proceeding ought to be the guiding factor while it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise."

5. To the same effect are the decisions of the Supreme Court in ***Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd.*** **(1996) 11 SCC 501**, ***Northern India Glass Industries v. Jaswant Singh & Ors.*** **(2003) 1 SCC 335**; ***Larsen & Toubro Ltd. v. State of Gujarat & Ors.*** **(1998) 4 SCC 387**. We may also refer to a division bench decision of this Court in ***Babu Ram & Ors. v. Union of India & Ors.*** **125 (2005) DLT 259**. This court had, after a review of the case law on the subject, observed :

> "Applying the above principles to the facts of the instant case, it is manifest that the petitioners could and ought to have challenged the validity of the declaration under Section 6 of the Act within a reasonable period from the date of the issue of the said declaration. The Courts have generally understood and held the period of limitation for filing a suit on the same cause of action to be a reasonable period for filing a writ petition also. By that standard, a writ petition challenging the validity of the declaration under Section 6 should have been filed by the year 1972. The petitioners did not obviously do so. They allowed the grass to grow under their feet and eventually chose a remedy which was

> not even otherwise available to them more than 11 years after the issue of the impugned declaration in 1980. By that time, the remedy of filing a writ petition stood barred by delay and laches. The institution of the suit, even assuming the same was bona fide, could not, therefore, either explain the previous delay or revive for the petitioners the remedy by way of a writ."

6. Applying the above test to the case at hand, there is no gainsaid that a petition filed ten yeas after the issue of the preliminary notification and declaration under Section 6 of the Act would be manifestly barred by delay and laches and would deserve to be dismissed on that ground alone.

7. Mr. Sethi next argued that the petitioners had applied for de-notification of the land in terms of Section 48 of the Act and that in terms of the de-notification policy formulated by the State Government, the matter had to be considered by a Committee in the light of the guidelines and the norms formulated for the same. No such consideration had, according to Mr. Sethi, been granted to the request made by the petitioners which according to him entitle the petitioners to a mandamus directing the Committee to examine the request and communicate the result thereof. He urged that the intimation dated 7th July, 2003 sent to the petitioners was not tantamount to a proper consideration of the request in terms of the policy and therefore was not conclusive of the matter.

8. On behalf of the respondents, it was on the other hand urged that the provisions of Section 48 of the Land Acquisition Act had no application whatsoever to the case at hand as the said provision applied only in case the possession of the land in question had not been taken over. In the instant case, the possession of the land having been taken over by the Collector, Land Acquisition, the request for de-notification was on the face of it without any merit and was therefore summarily turned down as was evident from the communication dated 7th July, 2003 challenged by the petitioners.

9. Section 48 of the Land Acquisition Act is an enabling provision. It empowers the Government to de-notify land that is under acquisition subject to the condition that such withdrawal of acquisition proceedings would be permissible only till such time the

possession of the land in question is not taken over. The possession of the land in the instant case had been taken over by the respondents on 1st October, 1999. Section 48 therefore had no application whatsoever to the case at hand. Any request seeking de-notification despite the taking over of possession by the respondents was obviously misconceived and hence liable to be rejected out of hand. That is precisely what has happened in the instant case as is evident from the communication dated 7th July, 2003 sent by the Government of Delhi to one of the petitioners. The argument of Mr. Sethi that the actual physical possession of the land was never taken over from the petitioners has not impressed us. Messrs Poddar and Salwan have produced the relevant official record before us to demonstrate that the possession of the land in question stood taken over on 1st November, 1999. The fact that the petitioners continued to sow crops on the land even after the land had vested in the State was in that view of the matter wholly inconsequential. As a matter of fact, any such cultivation could at best be deemed to be permissive and the land for that purpose deemed to be in trust with those cultivating the same. We are supported in that view by a decision of the Division Bench of this Court in ***Nagin Chand Godha v. Union of India & Ors.*** **2003 (70) DRJ 721** where the Court has while dealing with a similar contention observed :

> The Apex Court in the case of **Executive Engineer Jal Nigam Central Stores Division U.P. v. Suresha Nand Juyal, (1997) 9 SCC 224**, also considered the question of symbolic possession taken by the Officers. Therefore, in view of what is stated hereinabove, it is not possible for this Court to agree with the submission of the learned counsel that possession is not taken. Suffice it to say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.

10. A special leave petition against the above decision was also dismissed and so

was a review before the Supreme Court.

11. In the light of what we have stated above, we have no hesitation in holding that the representation filed by the petitioners seeking de-notification of the land was not maintainable and had been rightly turned down.

12. In the result, this writ petition fails and is hereby dismissed but in the circumstances without any order as to costs.

T.S. THAKUR, J

VEENA BIRBAL, J.

FEBRUARY 08, 2007
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